

COUNCIL

Agenda # \_\_\_\_\_

MEETING OF October 26, 2004



## **STAFF REPORT**

---

### **Resolution Approving a Permanent Encroachment Agreement for Construction of a Retaining Wall within the Public Right-of-Way at 2014 Mezes Avenue**

Honorable Mayor and City Council:

#### **Summary**

The property owners at 2014 Mezes Avenue wish to enter into a Permanent Encroachment Agreement with the City to replace a retaining wall within the public right-of-way. A resolution is provided for Council consideration approving the encroachment with conditions.

#### **Background and Discussion**

The property owners of 2014 Mezes Avenue have applied for a Permanent Encroachment Agreement to construct a retaining wall within the public right-of-way. The proposed mortared brick retaining wall will replace an old retaining wall, which is in a state of disrepair. The new 2-foot high retaining wall will encroach approximately five feet into the public right-of-way.

The Belmont Municipal Code, Chapter 22, Article 1, describes the process and requirements for obtaining approval to encroach upon the public right-of-way. Section 22-6(1) defines the City Council as the sole authority allowed to issue written permits for major encroachments including a retaining wall within the public right-of-way. Section 22-7(C) requires the Director of Public Works to review all major encroachment applications and if he finds the applications in accordance with the code, recommend approval with such conditions as he deems necessary to protect the health and safety of the public and protect the City.

The City Council may choose to approve or to conditionally approve the application if it finds that there is some public benefit for the encroachment. Section 22-7(C)(1) provides examples of acceptable public benefit, which include, but are not limited to, the following:

1. A retaining wall that allows added on-street parking, sidewalk, or safer sight distance.
2. Retaining walls that reduces the amount of grading.
3. Encroachments that replace or improve an existing undesirable physical condition.

Staff has reviewed the encroachment application for the 2014 Mezes Avenue retaining wall and find it to be in compliance with the City Code. The public right-of-way in front of 2014 Mezes Avenue extends approximately 12 feet beyond the edge of street pavement (Exhibit A). In order to fulfill the obligation to provide public benefit for the encroachment, the property owners propose to replace a non-standard parking pad with a parking pad per City standards and to construct a new sidewalk along the frontage of the property. City staff believes that the new retaining wall, parking pad and sidewalk will fulfill the obligation to provide the required public benefit.

A notice was sent to all affected properties within 300 feet of the project location that the City Council will be considering the item on October 26<sup>th</sup> per the City's requirements.

### **Fiscal Impact**

There is no fiscal impact to the City. All costs are the property owner's responsibility.

### **Recommendation**

It is recommended that the City Council adopt the attached resolution approving, with conditions of approval, a Permanent Encroachment Agreement for a retaining wall within the public right-of-way at 2014 Mezes Avenue.

### **Alternatives**

1. Reject the application
2. Continue to the next Council meeting

### **Attachments**

1. Resolution
2. Exhibit A – Aerial of Location

Respectfully submitted,

Bozhena Palatnik  
Assistant Civil Engineer

Raymond E. Davis III, PE, PTOE  
Director of Public Works

Daniel Rich  
Interim City Manager

**RESOLUTION NO. \_\_\_\_\_**

**CITY OF BELMONT  
San Mateo County, California**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING A  
PERMANENT ENCROACHMENT AGREEMENT FOR CONSTRUCTION OF A RETAINING  
WALL, WITHIN THE PUBLIC RIGHT-OF-WAY AT 2014 MEZES AVENUE – APN 044-061-010**

WHEREAS, the City of Belmont is authorized by Municipal Code Sec. 22-5 to issue encroachment permits for construction of structures in the public right-of-way; and,

WHEREAS, the property owners of 2014 Mezes Avenue have applied for a Permanent Encroachment Agreement; and,

WHEREAS, the Belmont City Council has made the following findings required by Municipal Code Sec. 22-6 for approval of a permanent encroachment agreement:

- (1) There is a public benefit to the encroachment as new parking pad and sidewalk will enhance public safety; and,
- (2) The encroachment will not unduly restrict the public right-of-way for other typical uses; and,
- (3) The City will be duly protected from liability for injury to persons and property; and,
- (4) The required bonds will guarantee the faithful performance of all conditions and requirements specified in the encroachment agreement.

WHEREAS, approval of this permanent encroachment agreement is subject to the following conditions:

- (1) The retaining wall shall be constructed according to the approved plans unless otherwise approved by the Director of Public Works; and,
- (2) The retaining wall shall be constructed in accordance with Municipal Code Section 9-47, “Retaining wall design”; and,
- (3) The parking pad and sidewalk shall be constructed according to the City standard plans; and,
- (4) The property owner shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,
- (5) The applicants shall not do anything to discourage the public from using the parking pad, including but not limited to placing signage, planter pots, chain or other hung barriers, or traffic cones; and,
- (6) The property owner shall be responsible for any restoration required as a consequence of work authorized by the City of Belmont within the public right-of-way; and,
- (7) The applicant agrees to begin and complete said improvements to the City’s satisfaction within 180 calendar days from the passage date of this Council Resolution approving this agreement; and,

WHEREAS, the structures built in connection with this agreement shall be constructed in accordance with City standards and with the benefit of a Construction Inspection Permit to provide for inspection of said construction, issuance of which is hereby conditionally approved, subject to the payment of inspection fees and posting of required surety to the Department of Public Works.

NOW, THEREFORE, IT IS HEREBY RESOLVED that:

- (1) The Belmont City Council finds the Permanent Encroachment Agreement in compliance with the City code; and,
- (2) The Belmont City Council approves the Permanent Encroachment Agreement with Paul Wyss and Karen Shane, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the retaining wall within the public right-of-way at 2014 Mezes Avenue as described above and as shown on the attached exhibits and its continuing maintenance by the property owner; and,
- (3) The Belmont City Council authorizes the City Manager to execute the Permanent Encroachment Agreement on behalf of the City of Belmont; and,
- (4) The Belmont City Council authorizes the City Clerk to file said Agreement with the County Recorder.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on this 26th day of October, 2004.

AYES, COUNCILMEMBER(S): \_\_\_\_\_

NOES, COUNCILMEMBER(S): \_\_\_\_\_

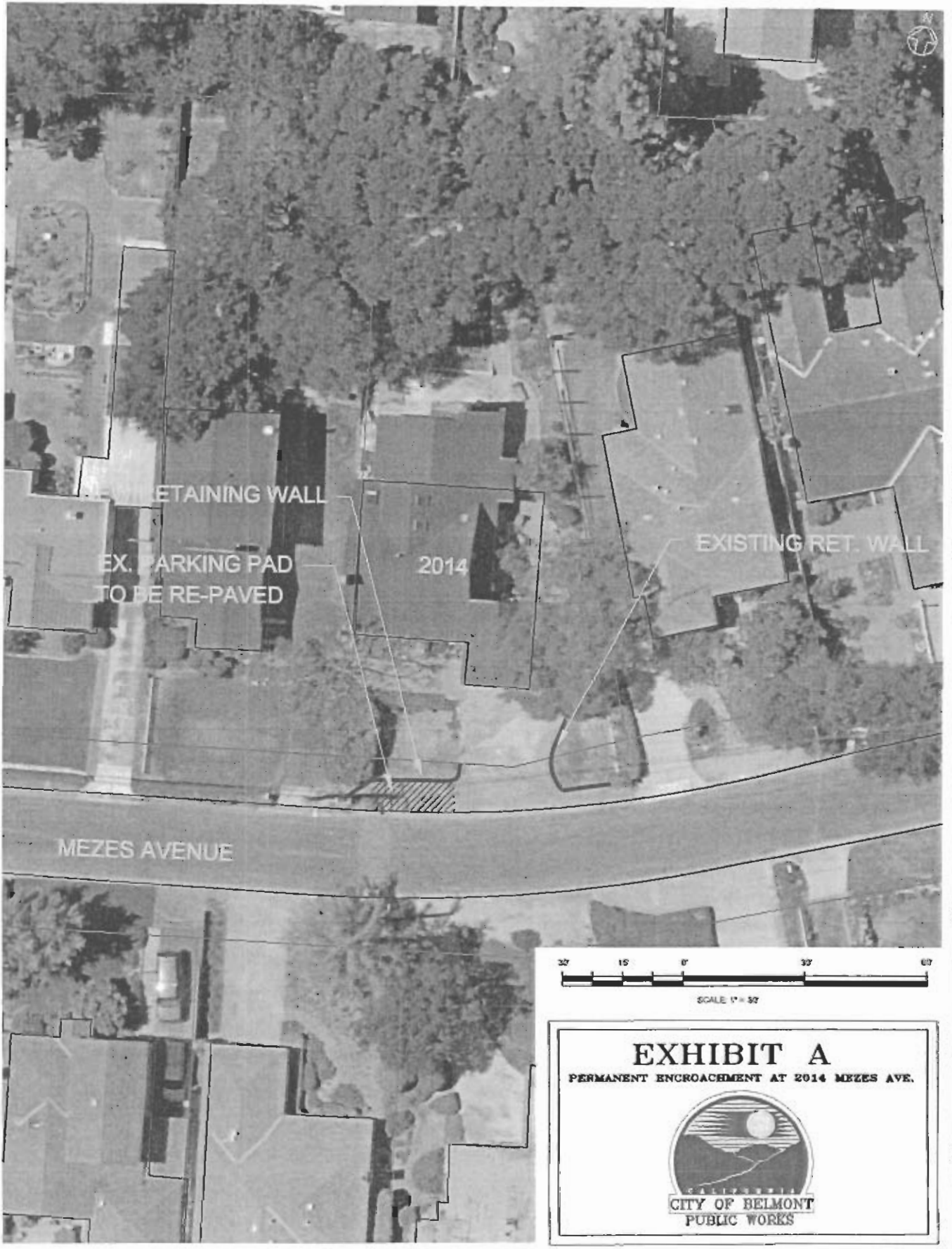
ABSTAIN, COUNCILMEMBER(S): \_\_\_\_\_

ABSENT, COUNCILMEMBER(S): \_\_\_\_\_

\_\_\_\_\_  
Clerk of the City of Belmont


APPROVED:

\_\_\_\_\_  
Mayor of the City of Belmont



**EXHIBIT A**

PERMANENT ENCROACHMENT AT 2014 MEZES AVE.



CITY OF BELMONT  
PUBLIC WORKS

J:\SPRINTS\MEZES\2014\EXHIBIT A.DWG